Supreme Court, U.S.
FILED

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No. _____

In The

# Supreme Court of the United States

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STEVEN M. BERESFORD

*Petitioner*

v.

INTERNAL REVENUE SERVICE,
US DEPARTMENT OF THE TREASURY
(UNITED STATES OF AMERICA)

*Respondent*

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On Petition For A Writ Of Certiorari
To The Ninth Circuit Court Of Appeals

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## PETITION FOR WRIT OF CERTIORARI

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21 pp

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Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

8/10/01

RE: BERESFORD v. IRS et al.

Your Honors:

I respectfully ask the Court to give the enclosed Petition a fair and impartial hearing, not only to resolve the questions presented, but to show that a pro se litigant can obtain justice at the highest levels.

Sincerely,

Steven M. Beresford, Ph.D.
Petitioner In Propria Persona

## QUESTIONS PRESENTED FOR REVIEW

1) The primary question is the resolution of a due process conflict involving federal income taxation that affects not only the Petitioner but the vast majority of Americans, and is therefore a matter of national importance.

On one hand, the IRS has published numerous authoritative admissions that the federal income tax system is based on voluntary compliance, specifically stating in one admission that the payment of federal income tax is voluntary. Nowhere in these admissions are any exceptions or conditions applied to the term *'voluntary compliance'*, nor is any special meaning attached to the word *'voluntary'*, which is therefore construed according to its plain meaning.

On the other hand, the IRS routinely persecutes individuals who choose not to volunteer, frequently seizing property without a warrant and/or causing the dissidents to be incarcerated.

The lower courts have failed to resolve the matter. The District Court erroneously dismissed the above-mentioned admissions as 'frivolous'. The Ninth Circuit Court of Appeals affirmed the District Court's ruling and declined Petitioner's request to provide its findings of fact and conclusions at law.

2) The lower courts have repeatedly disregarded several important rulings by this Court on the subject of federal income taxation. The secondary question is whether the lower courts were justified in disregarding these rulings.

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All parties appear in the caption of the case on the cover page.

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In The

**Supreme Court Of The United States**

## PETITION FOR WRIT OF CERTIORARI

Petitioner hereby prays for a writ of certiorari to review the judgments below.

## LOWER COURT OPINIONS

The Ninth Circuit Court of Appeals affirmed the District Court in 00-35650 in which the District Court in CV-00-00293 granted the United States of America's motion to dismiss Petitioner's suit for refund of taxes. Both rulings are included in the Appendix. The ruling of the Ninth Circuit Court of Appeals is unpublished.

## STATEMENT OF JURISDICTION

The Ninth Circuit Court of Appeals decided Petitioner's case on February 23rd, 2001 and denied Petitioner's timely petition for rehearing en banc on May 17th, 2001. Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

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## CONSTITUTIONAL PROVISIONS

The Constitution of the United States provides in pertinent part:

Article 1, Section 2:

*"Representatives and direct taxes shall be apportioned among the several States which may included within this Union, according to their respective numbers . . ."*

Article 1, Section 8:

*"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States."*

Article 1, Section 9:

*"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."*

Amendment XVI:

*"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."*

## STATEMENT OF THE CASE

The United States government has published numerous authoritative admissions that the federal income tax system is based on voluntary compliance, and that the payment of federal income tax is voluntary. These admissions include (emphasis added):

i) *"Taxpayers in the United States assess their tax liabilities against themselves and **pay them voluntarily**. This system of assessment and payment is based on the principle of **voluntary compliance**."* Internal Revenue Manual, 20:123.

ii) *"The purpose of publishing revenue rulings and revenue procedures . . . is to assist taxpayers in attaining maximum **voluntary compliance**."* 26 C.F.R. 601.601.

iii) *"The tax system is based on **voluntary compliance** . . ."* 26 C.F.R. 601.602.

iv) *"Our income tax system is **voluntary** . . ."* Treasury Regulation 601.103.

v) *"The mission of the Service is to encourage and achieve the highest possible degree of **voluntary compliance** with the tax laws and regulations and to maintain the highest degree of public confidence in the integrity and efficiency of the Service."* Federal Register, Volume 39, 62 (11572), 1974.

vi) *"Our system of taxation is based upon **voluntary assessment and payment**, not upon distraint."* Flora v. United States, 362 U.S. 179 (1960).

vii) *"Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now the situation is as different as day and night."* Testimony of Dwight E. Avis, Head of the Bureau of Internal Revenue Alcohol and Tobacco Tax Division, before the House Ways and Means Committee, 83rd Congress, 1953.

Based on these admissions, Petitioner chose not to pay federal income taxes for 1987, 1988, and 1989. The IRS filed a 'notice of federal tax lien' against him in 1996, which it used to withhold $14,609.97 under protest from the sale of his home in 1999. Petitioner subsequently claimed a refund from the IRS pursuant to 26 U.S.C. 7422(a). His claim was ignored.

**The Meaning Of 'Voluntary Compliance'**

The United States government has not defined *'voluntary compliance'*, hence it is necessary to rely on the semantic attributes of the term.

It is important to note that none of the above admissions impose any conditions on or ascribe any special meaning to the term *'voluntary compliance'*, such as *'in the sense that'* or *'subject to the condition that'* or *'with the exception of'*. If the United States government intended to make voluntary compliance conditional, these admissions would have surely have contained specific language to stipulate the conditions. In fact, the word *'voluntary'* always stands unmodified and must therefore be construed in terms of its plain meaning, which includes:

*"Done without compulsion or legal obligation."* Chambers English Dictionary (1988).

*"Without legal obligation or consideration."* American Heritage Dictionary (1992).

*"Acting or done without any present legal obligation to do the thing done, or any such obligation that can accrue from the current state of affairs. Voluntary implies freedom from any compulsion that could constrain one's choice."* Webster's Third New International Dictionary (1993).

*"Although for legal purposes the word 'voluntary' is considered to be so simple and in such general use that it need not be defined, it has been variously defined as meaning acting without compulsion; the doing of something which a person is free to do or not to do, as he so desires . . . without any present legal obligation to do the thing done."* Corpus Juris Secundum (92: 1029, 1030, 1031).

Hence the term *'voluntary compliance'* must be construed according to its plain meaning, namely that the assessment and payment of federal income tax is without any compulsion or legal obligation.

**Constitutional Considerations**

The Constitution makes important distinctions between direct and indirect taxes and sets up different conditions for imposing them. Direct taxes are imposed directly upon individuals and include taxes on wages, salaries, and personal compensation. Direct taxes must be apportioned among the various States, according to the population of each State. Indirect taxes are excises or tariffs imposed on things such as commodities, corporate profits, and stock dividends, and must be uniform throughout the United States.

Congress attempted to directly tax sources of income such as wages, salaries, and compensation for personal services through the Income Tax Act of 1894. This Court thoroughly reviewed the Act in Pollock v. Farmer's Loan & Trust Company, 158 U.S. 601 (1895) and ruled it unconstitutional because it failed to meet the requirement of apportionment.

In 1909, Congress passed the Corporate Excise Tax Act, which taxed corporate income. This act met the requirement for uniformity, and because it was an excise tax, no apportionment was required.

In 1913, Congress passed the 16th Amendment, which abolished the apportionment requirement for direct taxation of income, then passed the Revenue Act of 1913. During those years, several cases came before this Court to determine the exact meaning of 'income' and the scope of the 16th Amendment. The following rulings are relevant to this case:

Flint v. Stone Tracy Co., 220 U.S. 107 (1911):

*"The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity."*

Stratton's Independence v. Howbert, 231 U.S. 399 (1913):

*"The Corporation Excise Tax Act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This Court has decided in the Pollock case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution."*

*"The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the tax by the income of the corporation."*

Brushaber v. Union Pacific, 240 U.S. 1 (1916):

*"We are of the opinion that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this* ***erroneous assumption*** *. . ."* (emphasis added)

Stanton v. Baltic Mining Co., 240 U.S. 103 (1916):

*"The provisions of the Sixteenth Amendment conferred no new power of taxation but simply prohibited the complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged . . ."*

Southern Pacific Co. v. Lowe, 247 U.S. 330 (1918):

*"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Revenue Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts."*

Doyle v. Mitchell Bros., 247 U.S. 179 (1918):

*"An examination of these and other provisions of the Act make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."*

Peck & Co. v. Lowe, 247 U.S. 165 (1918):

*"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects."*

Eisner v. Macomber, 252 U.S. 189 (1920):

*"The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."*

*"Proper regard for its genesis as well as its very clear language, requires also that this amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal."*

*"In order, therefore, that the clauses cited from Article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also have proper effect, it becomes essential to distinguish between what is and what is not 'income' as the term is there used."*

*"Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through sale or conversion of capital assets."*

*"The government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word 'gain,' which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived: 'derived-from-capital'; 'gain-derived-from-capital.'"*

*"Here we have the essential matter, not a gain accruing to capital; not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being 'derived' - that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal - that is income derived from property."*

Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921):

*"There would seem to be no room to doubt that the word 'income' must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court."*

Bowers v. Kerbaugh-Empire, 271 U.S. 170 (1926):

*"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."*

## ANALYSIS OF THESE RULINGS

These rulings state without ambiguity that the 'income' referred to in the 16th Amendment and the subsequent Revenue Acts is the same as the corporate income referred to in the Corporation Excise Tax Act of 1909. (Southern Pacific, Merchant's Loan, Bowers.)

These rulings also state without ambiguity that income tax is an indirect, excise tax imposed on the privilege of doing business in a corporate capacity, measured by the amount of gain or profit resulting from the business. (Flint, Stratton's, Doyle, Eisner.)

Nowhere do these rulings state or even suggest that income tax is a direct per capita tax on wages, salaries, or compensation for personal services. In fact, Eisner precisely defines the word 'income' as the gain or profit derived from capital, labor, or capital assets. Let us consider each form of 'income' defined by Eisner:

a) **Gain Derived From Capital.** Examples include stock dividends and interest from banks and bonds.

b) **Gain Derived From Labor.** Examples include profits resulting from the hiring of employees, such as the use of employees to run a business, or contracting employees to a third party.

c) **Gain Derived From Capital & Labor Combined.** Examples include profits resulting from the purchase of machinery and hiring employees to operate it, or renting an office and hiring employees to run it.

d) **Profit Gained From The Sale of Capital Assets.** Examples include profits resulting from the sale of assets such as merchandise, stocks, and real estate.

e) **Profit Gained From The Conversion of Capital Assets.** Examples include profits resulting from the exchange of one piece of equipment for another, or the exchange of one piece of real estate for another.

To clarify the situation, Eisner states that the term *'derived from'* separates income from its source. An item of income is derived from the source but is not the same as the source, just as wine is not the same as grapes. ***The essence of the matter is that the source cannot be taxed. Only income (gain or profit) derived from the source can be taxed.***

For example, the Revenue Act of 1913 stated: *"The net income of a taxable person shall include gains, profits, and income derived from salaries, wages, and compensation for personal services . . ."*

The language of the Act shows that Congress intended salaries, wages, and compensation for personal services to be classified as sources of income.

The rulings of this Court discussed above also state that the 16th Amendment conferred no new power of taxation, nor did it extend the taxing power to new or excepted subjects, nor did it repeal any of the taxing clauses of the Constitution, which therefore remain intact. (Brushaber, Stanton, Peck, Eisner.)

Hence the direct per capita taxation without apportionment of salaries, wages, and compensation for personal services is lawful under the current system ***only if it is voluntary.*** That is why the admissions of the United States government discussed previously concur in stating that the income tax system is based on voluntary compliance and that the payment of income tax by individuals is voluntary.

## REASONS FOR GRANTING THE WRIT

The biggest mistake made by the lower courts is their failure to consider or even acknowledge the evidence -- the published admissions of the United States government regarding voluntary compliance.

Similarly, the lower courts failed to consider or even acknowledge the due process conflict caused by the IRS, which publicly admits that the payment of federal income tax is voluntary but persecutes those who choose not to volunteer.

By affirming the District Court's decision, the Ninth Circuit Court of Appeals (henceforth referred to as the 'Panel') commit or subscribe to the following errors:

### a) Misrepresentation Of Petitioner's Argument

The District Court based its decision on the statement: *"Beresford's primary contention, that the federal income tax system is based on voluntary compliance, has been held to completely lacking in legal merit and patently frivolous."*

The above statement is completely erroneous. Petitioner has never contended that the federal income tax system is based on voluntary compliance. It is the United States government, not the Petitioner, that contends that the federal income tax system is based on voluntary compliance, through the published admissions referred to previously. Petitioner simply relies on these admissions as being true and correct, accepting them at their face value according to their plain meaning.

Petitioner's primary contention is that because the United States government publicly admits that the payment of income tax is voluntary, the IRS had no legal cause of action to withhold money from the sale of his home. This argument was ignored by the lower courts.

**b) Conflict With Statutory Regulations**

The decisions of the lower courts are in direct conflict with 26 C.F.R. 601.601 and 26 C.F.R. 601.602. As previously noted, 26 C.F.R. 601.602 states: *"The tax system is based on voluntary compliance . . ."*

**c) Conflict With Prior Decisions Of This Court**

It is well settled that Supreme Court decisions are binding on all lower courts, and that lower court decisions that conflict with Supreme Court decisions are erroneous. In this case, the decisions of the District Court and the Panel are in conflict with numerous Supreme Court decisions for the following reasons:

i) This Court has repeatedly ruled that its own decisions, government agency regulations, and statements made by senior government officials constitute reliable admissions. United States v. Bishop, 412 U.S. 346 (1973); United States v. Mason, 412 U.S. 391 (1973); Raley v. Ohio, 360 U.S. 423 (1959); Cox v. Louisiana, 379 U.S. 559 (1965); United States v. Penn. Ind. Chem. Corp., 411 U.S. 655 (1973).

By affirming the District Court's decision, the Panel in effect denies the reliability of the admissions referred to previously and is therefore in direct conflict with the Supreme Court.

ii) This Court has repeatedly ruled that laws must be interpreted in terms of their plain meaning and that in cases of doubt or ambiguity, they must be construed against the government and favor of the individual:

*"There must be certainty as to the meaning and scope of language imposing any tax, and doubt in respect to its meaning is to be resolved in favor of the taxpayer."* Treat v. White, 181 U.S. 264 (1901).

*"The citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid."* Spreckels Sugar Refining Co. v. McClain, 192 U.S. 397 (1904).

*"In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen."* Gould v. Gould, 245 U.S. 151 (1917).

As discussed above, a serious due process conflict exists between the published admissions of the IRS (which specifically states that the payment of income tax is voluntary) and the actual behavior of the IRS (which routinely persecutes those who choose not to volunteer). By resolving this ambiguity in favor of the IRS instead of the Petitioner, the lower courts are in direct conflict with the Supreme Court.

## CONCLUSION

Throughout these entire proceedings, the lower courts have repeatedly refused to consider or even acknowledge the main issues surrounding the matter, namely:

a) The reliability and implications of the published admissions of the United States government regarding voluntary compliance.

b) The due process conflict imposed by the IRS on the Petitioner.

c) Petitioner's argument, which is that because the income tax system is voluntary, the IRS had no legal cause of action against him when it withheld money from the sale of his home.

Sweeping these issues under the proverbial carpet by labeling them 'frivolous' does not do justice to the Petitioner nor to the substantial body of law supporting his case.

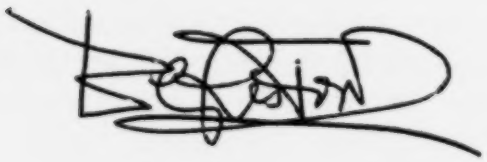
This Court ruled in United States v. Mason, 412 U.S. 391 (1973): *"If the doctrine of stare decisis has any meaning at all, it requires that people in their everyday affairs must be able to rely on our decisions and not be penalized by them."*

Petitioner has indeed relied on decisions of this Court and has been penalized by them, first by the IRS, then by the lower courts, which have repeatedly disregarded the decisions of this Court in Treat, Spreckels, Gould, Bishop, Mason, Raley, Cox, Flora, etc.

In closing, Petitioner points out that this case is not about shirking his duty by refusing to pay his fair share of taxes. Petitioner agrees that taxation is the price we pay for a civilized society, and he is willing to pay whatever taxes he is legally liable for. By the same token, he is not willing to pay taxes for which he is not legally liable.

Historically, this Court has always stood as the supreme voice of logic, reason, and integrity, one of whose major functions is to curb the unbridled greed and lust for power shown by many government officials, especially in the realm of taxation.

Petitioner therefore respectfully and prayerfully calls on this Court to reassert its authority and provide a fair and just resolution to this dilemma by granting a writ of certiorari.



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Dated: 8/10/01